

Serial No. 09/971,799
Attorney Docket No. PG4113US2

REMARKS/ ARGUMENTS

This Amendment is submitted in response to the final Office Action mailed October 29, 2003 (the Action). Currently Claims 1-55, 57-71, 81-105, 109-113, and 116-125 are pending. Claims 117-123, which are directed to non-elected species, have been withdrawn from consideration; however, Applicants understand that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

Applicants appreciate the indication that Claims 1-24, 26-55, 57-71, 81-104, and 125 are allowed.

Claim 109 has been amended to correct a typographical error, namely the double occurrence of the word "a". Claim 109 has also been amended as described in Section II below.

Claim 25 is rejected under 35 U.S.C. § 101 as being a substantial duplicate of claim 19. Claim 25 has been canceled. Applicants respectfully request that this rejection be withdrawn.

I. Claim 105 is Patentable Over Alband in View of Marr

Claims 105 and 113 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,775,321 to Alband (Alband) in view of WO 96/26755 (Marr). The Action admits that Alband does not disclose a flexible means for enclosing a can, but asserts that Marr proposes such a flexible means. Specifically, the Action states that:

As indicated by [Marr], the cover may suitably constitute a sleeve (3) of plastic, rubber or synthetic rubber (see page 3, lines 1-4). Therefore the cover will surround/enclose the MDI and will be flexible.

Applicants respectfully traverse this rejection.

Marr neither discloses nor suggests a flexible means for enclosing said can as recited in Claim 105. The mere proposal that "the cover may suitably constitute a sleeve (3) of plastic, rubber or synthetic rubber," without more, is not sufficient to conclude that the cover of Marr will surround/enclose the MDI and will be flexible as asserted by the Action. In fact, when this statement regarding the materials of construction is taken in the complete context of Marr's disclosure, it is apparent that

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Marr proposes a rigid, hollow sleeve that is adapted to friction fit over a drug dispenser to change the external appearance of the dispenser.

For example, Figure 2 illustrates the sleeve (3) referred to in the Action being slid over the casing (4). It is clear from Figure 2 that the sleeve is a rigid sleeve. At page 3, line 36 to page 4, line 2, Marr states that "the sleeve 3 is a friction fit on the casing 4 and the sleeve 3 grips the casing 4 by means of a high friction rubber from which the sleeve is manufactured." There is no disclosure in Marr as to how one would achieve such a friction fit on the casing with a sleeve that grips the casing by means of a high friction rubber if the sleeve were a flexible sleeve. It is apparent from Figure 2 and the description thereof that the sleeve is a rigid sleeve.

As another example, on page 4 at lines 19-20, the sleeve is described as "tight fitting with respect to the casing 4." There is no disclosure in Marr as to how one would achieve such a tight fit with respect to the casing if the sleeve were a flexible sleeve. It is apparent from the description on page 4 that such a tight fitting sleeve would be a rigid sleeve.

In fact, all particular embodiments described by Marr are referred to as having tight fitting or friction fit sleeves. Marr does not disclose or suggest how such a tight fit or friction fit could be achieved with a flexible sleeve. It is apparent that, when viewed in its totality, the disclosure of Marr is limited to that of a rigid, hollow sleeve. For at least the foregoing reasons, Applicants respectfully submit that Alband in view of Marr neither discloses nor suggests all of the recitations of claim 105. Accordingly, Applicants respectfully request that this rejection be withdrawn. As claim 113 depends from patentable claim 105, Applicants submit that claim 113 is also patentable over Alband in view of Marr and request that this rejection be withdrawn.

II. Claims 109 through 112 Are Patentable over Alband in View of Marr and further in view of Plachenov

Claims 109-112 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Alband in view of Marr and further in view of U.S. Patent No. 3,704,806 to Plachenov et al. The Action argues that claims 109-112 fail to claim any useful proximity between the dessicant and the can or between the dessicant and the flexible means for enclosing. Applicants respectfully traverse this rejection.

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As amended claim 109 recites a drug product further comprising a desiccant capable of reducing the amount of moisture in the drug product. Support for this amendment can be found in the specification at pages 14 and 15, among other places. Applicants respectfully submit that the combination of Alband, Marr, and Plachenov neither discloses nor suggests the recitations of amended claim 109. Accordingly, Applicants respectfully request that this rejection be withdrawn. As claims 110-112 depend from patentable claim 109, Applicants further request that these rejections be withdrawn.

III. Claims 116 and 124 Are Patentable Over Alband in view of Marr and Further in View of Official Notice Taken by the Examiner

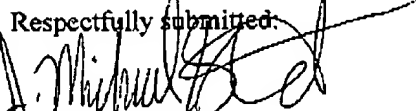
Claims 116 and 124 are rejected under 35 U.S.C. § 103 as being unpatentable over Alband in view of Marr as applied to claim 105 above, and further in view of official notice taken by the examiner that albuterol sulfate is known as a medication for use in metered dose inhalers. Applicants respectfully submit that claims 116 and 124 are patentable over Alband in view of Marr and further in view of the official notice for at least the reason that these claims depend from patentable claim 105. Accordingly, Applicants respectfully request that this rejection be withdrawn.

IV. Conclusion

For at least the foregoing reasons, Applicants respectfully request entry of this Amendment After Final and the issuance of a Notice of Allowance forthwith. Alternatively, Applicants respectfully request entry of this Amendment After Final as narrowing the issues on appeal. Applicants encourage the Examiner to direct any questions to the undersigned, who may be contacted at (919) 483-9024.

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